



87-SBE-025

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
W. R. THOMASON, INC.) No. 84A-926-DB
)

For Appellant: Edmond E. Traille
Certified Public Accountant

For Respondent: Patricia I. Hart
Counsel

O P I N I O N

This appeal is made pursuant to section 25666^{1/} of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of W. R. Thomason, Inc., against a proposed assessment of additional franchise tax in the amount of \$38,790 for the income year ended March 31, 1980.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the income year in issue.

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The question presented is whether appellant's distributive shares of the losses of certain limited partnerships should be allocated to the states where the partnerships' property and activities were located or to California, where appellant's commercial domicile is located.

Appellant, a California corporation whose principal office is located in Martinez, is an engineering contractor. During the income year in issue, appellant apparently performed contracts both within and without California. It also acquired limited partnership interests in two partnerships engaged in oil and gas exploration and development entirely outside California, On its franchise tax return. for the year in question, appellant claimed a deduction for its distributive shares of the substantial losses realized by these partnerships. Respondent audited the return and disallowed this deduction, on the ground that the partnership losses constituted nonbusiness income allocable entirely to the states in which the partnerships' property and activities were located.. Respondent also made other audit adjustments which appellant has not contested.

In disallowing appellant's partnership losses, respondent relied upon our decision in the Appeal of E. F. Ahmanson & Company, decided by this board on April 5, 1965. There, as here, the taxpayer was a limited partner in partnerships engaged in exploring for oil outside of California. We held that the taxpayer's partnership losses were attributable to sources outside this state and, therefore, were nondeductible from its California-source income by virtue, of sections 25101 and 23040. Appellant contends that Ahmanson is not controlling, since limited partnership interests are now considered "securities" under California's securities laws and because the income or loss from a "security" must be allocated to the owner's commercial domicile. This argument, appellant says, was not considered in Ahmanson.

We believe that Ahmanson is controlling, and that appellant's argument ~~is not~~ significantly different from the one made by the taxpayer in that case. There it was argued that the losses arose from "intangible" partnership interests having a situs in California. We rejected that position on the basis of case law holding that, while the immediate source or the dividend income of a corporate shareholder is the intangible stock

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itself, a partner has *an* ownership interest in the partnership's property, and the source of the partner's income, therefore, is the place where that property and the partnership's activities are located. Appellant has cited no authority suggesting that Ahmanson is no longer sound law in this respect, and we are unaware of any. Since the losses in question arose from the business operations of the partnerships and not from appellant's disposition of its "intangible" partnership interests, there is no discernible reason to even consider assigning an artificial source *orsitus* to these losses. Respondent's action in this matter will be sustained.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of W. R. Thomason, fnc., against a proposed assessment of additional franchise tax in the amount of \$38,790 for the income year ended March 31, 1980, be and the same **is** hereby sustained.

.Done at Sacramento, California, this 3rd **day**
of March , 1987 by the State Board of Equalization,
 with Board Members **Mr.** Collis, Mr. Bennett, Mr. Carpenter
 and Ms. Baker present.

<u>Conway H. Collis</u>	, Chairman
<u>William M. Bennett</u>	, Member
<u>Paul Carpenter</u>	, Member
<u>Anne Baker*</u>	, Member
	, Member

*For Gray Davis, per Government Code section 7.9

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
) 84A-926-DB
W. R. Thomason, Inc.)

ORDER DENYING PETITION FOR REHEARING

Upon consideration of the petition filed April 2, 1987, by W. R. Thomason, Inc.,, for rehearing of its appeal from the action of the Franchise Tax Board, we are of' the opinion that none of the grounds set forth in the petition constitute cause for the granting thereof and, accordingly, it is hereby ordered that the petition be and the same is hereby denied and that our order of March 3, 1987, be and the same is hereby affirmed.

Done at Sacramento, California this 7th day of May 1987, by the State Board of Equalization, with Board Members Mr. Collis, Mr. Dronenburg, Mr. Bennett, Mr. Carpenter and Ms. Baker present.

Conway H. Collis, Chairman

Ernest J. Dronenburg, Jr., Member

William M. Bennett, Member

Paul Carpenter, Member

Anne Baker* , Member

*For Gray, per Government Code section 7.9